



A-570-967, C-570-968
Scope Request: Sputtering
Target Backing Plates
Public Document
AD/CVDVI:FB

DATE: January 31, 2019

MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia
Acting Director
AD/CVD Operations, Office VI

Erin Kearney
Program Manager
AD/CVD Operations, Office VI

FROM: Fred Baker
Analyst
AD/CVD Operations, Office VI

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Tosoh SMD, Inc.'s Sputtering Target Backing Plates

Summary

On November 13, 2018 the Department of Commerce (Commerce) received a scope ruling request from Tosoh SMD, Inc. (Tosoh SMD),¹ requesting that we determine that its aluminum sputtering target backing plates (backing plates) imported from the People's Republic of China (China) fall outside the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from China.² As the record reflects that Tosoh SMD's backing

¹ See Letter from Tosoh SMD, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Scope Ruling Request on Behalf of Tosoh SMD, Inc.," dated November 13, 2018 (Scope Request).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011), and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653

plates contain no extruded aluminum, we determine that the backing plates are not covered by the scope of the AD and CVD *Orders* on aluminum extrusions from China.

Background

On May 14, 2018, Tosoh SMD first submitted its scope request. On June 8, 2018, the petitioner³ submitted comments concerning Tosoh SMD's May 14, 2018 request.⁴ We rejected Tosoh SMD's request on June 25, 2018, because it was not filed in proper form.⁵ Tosoh SMD resubmitted the request on July 6, 2018. Because Tosoh SMD's July 6, 2018 submission did not contain all information necessary to make a scope ruling, we rejected that submission, but also issued an accompanying questionnaire to Tosoh SMD on August 14, 2018.⁶ Tosoh SMD refiled its scope request and responded to the accompanying questionnaire on November 13, 2018.⁷ Because the Tosoh SMD's scope request was fully filed on November 13, 2018, and provided information sufficient to make a scope ruling, the deadline for issuing the scope ruling became December 28, 2018, pursuant to 19 CFR 351.225(c)(2).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁸ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final decision is now February 6, 2019.

SCOPE OF THE ORDERS

The merchandise covered by the orders is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent

(May 26, 2011) (collectively, the *Orders*).

³ The petitioner is the Aluminum Extrusions Fair Trade Committee (the petitioner).

⁴ See Petitioner Letter, "Aluminum Extrusions from the People's Republic of China: Comments on Tosoh SMD's Scope Ruling Request," dated June 8, 2018 (Petitioner's Comments).

⁵ See Commerce Letter, "Scope Inquiry on Sputtering Target Backing Plates," dated June 25, 2018.

⁶ See Commerce Letter Re: Aluminum Extrusions from the People's Republic of China: Questionnaire on Sputtering Target Backing Plates," dated August 14, 2018 (Tosoh SMD Questionnaire).

⁷ See Scope Request.

⁸ See memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are

entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the orders merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these orders are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05,

9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

LEGAL FRAMEWORK

When a request for a scope ruling is filed, Commerce examines the scope language of the order and the description of the product contained in the scope-ruling request.⁹ Pursuant to Commerce's regulations, Commerce may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.¹⁰ If Commerce determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.¹¹

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, Commerce will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before Commerce.

DESCRIPTION OF THE MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

Tosoh SMD explains that the backing plates that are the subject of this scope inquiry are used as a component part of physical vapor deposition (PVD) machines. PVD is a method of depositing thin films of material, typically metals, from a "target" onto a "substrate."¹² A type of PVD is called "sputter deposition," which involves ejecting materials (in Tosoh SMD's case, aluminum atoms) from a disc-shaped aluminum (sputtering) target by bombarding the target with ions within the confines of a tube-like vacuum chamber.¹³ The ejected aluminum atoms then migrate to the other end of the vacuum chamber where they are deposited in a thin film onto an awaiting

⁹ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁰ See 19 CFR 351.225(k)(1).

¹¹ See 19 CFR 351.225(d).

¹² See Scope Request at 2.

¹³ *Id.*

substrate material such as a silicon wafer.¹⁴ This thin film deposition is used to manufacture microprocessor circuits, as well as other products such as reflecting mirrors.¹⁵

Aluminum targets are made of high-purity aluminum, and are of a circular, disc-like shape, ranging in diameters from 15 inches to over 22 inches.¹⁶ In order to be installed and utilized in a PVD machine, aluminum targets must be affixed to a “backing plate,” which is the merchandise at issue in this scope inquiry.¹⁷

Tosoh SMD describes a backing plate as being made of commercial grade purity aluminum, and like the aluminum target, being of a circular, disc-like shape, but with a slightly larger diameter than the aluminum target.¹⁸ Tosoh SMD states and provides supporting evidence showing that the aluminum used in the production of backing plates is produced through a rolling process, and not an extrusion process.¹⁹ Backing plates range in thickness from approximately $\frac{3}{4}$ of an inch to over 1.5 inches.²⁰ Tosoh SMD explains that its backing plates are imported into the United States as a semi-finished product.²¹ Tosoh explains that, after importation, they are joined to a target by welding or bonding, and additional machining is done on them after the target and backing plate have been joined.²²

Backing plates enter the United States under HTS 8486.90.0000, which includes “machines and apparatus of a kind used . . . for the manufacture of semiconductor boules or wafers semiconductor devices, electronic integrated circuits or flatpanel displays”²³

RELEVANT SCOPE DETERMINATIONS

Certain Decorative Waste Containers²⁴

At issue were certain decorative waste containers (waste containers) imported by Rubbermaid Commercial Products LLC (Rubbermaid). Rubbermaid argued that the waste containers fell outside the scope of the *Orders* because they were not produced by an extrusion process, but via deep drawing and welding processes. The petitioner argued it was unclear whether the aluminum material in the waste containers was produced using an extrusion process. Commerce disagreed with the petitioner, citing Rubbermaid’s description of the production process and evidence Rubbermaid had placed on the record, in which it was clear that the waste containers were produced from aluminum ingots that were rolled, drawn, and welded. Thus, Commerce

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.* at 3 and Attachments 14-26 (schematics showing product dimensions).

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.* at 3.

²⁴ See Memorandum, “Final Scope Ruling on Certain Decorative Waste Containers,” dated October 31, 2011 (Decorative Waste Containers Scope Ruling) (attached as Attachment 1 to this Scope Ruling).

concluded, the waste containers were not produced using an extrusion process and were therefore excluded from the scope of the *Orders*.

INTERESTED PARTY COMMENTS

Tosoh SMD Comments

Tosoh SMD argues that the merchandise at issue is outside the scope of the *Orders* because neither the raw materials, nor the backing plates themselves, undergo an extrusion process.

The backing plates imported by Tosoh SMD are produced from 6061T651 raw aluminum plate. The producer of the backing plates, Tosoh SMD (Shanghai) Co., Ltd. (Tosoh SMD Shanghai), purchases the raw aluminum plate from an aluminum producer/supplier (the supplier).²⁵ Tosoh SMD states that the supplier produces the plate according to standards for aluminum sheet and plate, which are manufactured according to a rolling process, rather than an extrusion process. To substantiate its claim, Tosoh SMD submitted a certification from the supplier stating that the plate it sells to Tosoh SMD Shanghai is produced using a hot-rolling process.²⁶ Tosoh SMD also submitted a statement from the supplier describing the production process used to make the aluminum plate.²⁷ The description indicates that the raw aluminum is first melted, and then cast into ingots that are subsequently reheated and rolled into aluminum plate, cut-to-length, and then quenched. The plate is then treated by further straightening and stretching, then aged in a furnace, and finally sawn into final shape.²⁸ Tosoh SMD notes that nowhere in that description of the production process is the material ever said to be subjected to an extrusion process. Tosoh SMD also submitted a product brochure from the supplier relating to its aluminum plate products that indicated that the supplier had access to an aluminum hot-rolling mill.²⁹

After the supplier completes production of the aluminum plate, it ships it to the Tosoh SMD Shanghai along with a certified test report. Tosoh SMD notes that the test report shows that the aluminum meets the requirements of ASTM B209-10 standard, which is an ASTM standard for rolled plate.

Upon receipt of the aluminum plate from the supplier, Tosoh SMD Shanghai cuts the plate into smaller, more manageable square-shaped blanks. Those blanks are then converted into a form which is ready for final machining.³⁰

As further support for its argument that the input aluminum used in backing plates is not extruded, Tosoh SMD points to a microstructural analysis it performed on T651 aluminum plate (*i.e.*, the plate used in producing backing plates), and compared it to a microstructural analysis it performed on extruded aluminum.³¹ Tosoh SMD states that the results show that the two types of aluminum have a different grain pattern. Specifically, the T651 aluminum plate shows a

²⁵ Due to the proprietary nature of the supplier's identity, it is not identified by name in this scope ruling.

²⁶ See Scope Request at 5 and Attachment 5.

²⁷ *Id.* at 5 and Attachment 6.

²⁸ *Id.* at 5.

²⁹ *Id.* at 5 and Attachment 7.

³⁰ *Id.* at 6.

³¹ *Id.* at 5-6 and Attachment 8.

microstructure with grains resembling circular shapes with some distortion on the edges. Tosoh SMD states that this grain structure is representative of a hot-rolled aluminum product that has been subject to post-rolling heat treatment, straightening, stretching, and then furnace aging. In contrast, the grain structure of the extruded aluminum exhibits grains that are highly aligned and elongated in one direction, resembling needle-shaped grains. Tosoh SMD states that this elongated grain structure is key to its production process and for proprietary reasons allows for Tosoh SMD to produce its backing plates without using extruded aluminum.³²

Tosoh SMD argues that the unambiguous language in the scope of the *Orders* requires that for an article to be within the scope, the product must be an “aluminum extrusion,” “produced by an extrusion process.” Tosoh SMD also notes that the *Orders* expressly exclude “aluminum alloy sheet or plates produced by other than an extrusion process.”³³ Furthermore, Tosoh SMD states that it is well-established that the cornerstone in any scope determination is the language of the order itself.³⁴ Therefore, Tosoh SMD argues that products are included within the scope of an order only if the language of the order includes the subject merchandise, or can be reasonably interpreted to include it.³⁵ Thus, Tosoh SMD concludes that because the description of the merchandise contained in the *Orders* is clear and unambiguous, and is limited to shapes and forms produced by an extrusion process, and because the description of the merchandise specifically excludes aluminum alloy sheet or plates produced by other than an extrusion process, its backing plates are not subject to the *Orders*.

Petitioner’s Comments

The petitioner requests that Commerce confirm Tosoh’s assertions that the backing plates are produced from aluminum plate, and at no point are any of the materials subjected to an extrusion process.³⁶

ANALYSIS

The scope of the *Orders* states that, “the merchandise covered by this order is aluminum extrusions which are shapes and forms, *produced by an extrusion process...*” (emphasis added). This language makes clear that the scope is limited to aluminum products produced using an extrusion process. Therefore, the scope of the *Orders* does not cover aluminum products produced using processes other than the extrusion process.

In response to the petitioner’s request that we seek to confirm Tosoh SMD’s assertions that the backing plates are produced from non-extruded aluminum, we issued a supplemental questionnaire to Tosoh SMD on August 14, 2018.³⁷ Upon review of Tosoh SMD’s scope request and its response to the supplemental questionnaire, we determine that there is no evidence that the aluminum used in the production of the backing plates is extruded. The supplier of the

³² *Id.* at 6.

³³ *Id.* at 9.

³⁴ *Id.*, at 10, citing *Walgreen Co. of Deerfield, IL v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010), (citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (*Duferco Steel*)).

³⁵ *Id.*, citing *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300 (Fed. Cir. 2013), citing *Duferco Steel*.

³⁶ See Petitioner’s Comments at 3.

³⁷ See Tosoh SMD Questionnaire.

aluminum, has submitted a certification supporting this conclusion.³⁸ The supplier also provided a description of the production process (see above), which indicates that the aluminum is produced using a rolling process and is never extruded. This description of the process is consistent with the supplier's product brochure that Tosoh SMD submitted.³⁹ It is also consistent with the certified test reports on the record, which indicate that the aluminum satisfies the ASTM B209-10 standard, which is the ASTM test standard for rolled plate.⁴⁰ Finally, the microstructural analysis that Tosoh SMD submitted also indicates that the T651 aluminum used in the production of backing plates differs from that of extruded aluminum.⁴¹

Based on the above record information, we conclude that backing plates are not produced from extruded aluminum. Therefore, based on the plain scope language and the record evidence we determine that Tosoh SMD's backing plates are not covered by the scope of the *Orders*. This determination is consistent with prior scope rulings in which we have found that merchandise made entirely from non-extruded aluminum is not subject to the *Orders*.⁴²

RECOMMENDATION

For the reasons discussed above, we recommend finding, pursuant to 19 CFR 351.225(d), that the sputtering target backing plates imported by Tosoh SMD are not subject to the scope of the *Orders* on aluminum extrusions from China.

Agree

Disagree

1/31/2019

X 

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

³⁸ See Scope Request at Attachment 5.

³⁹ See Scope Request at Attachment 5.

⁴⁰ See Scope Request at Attachments 4 and 27-29.

⁴¹ See Scope Request at 5-6 and Attachment 8.

⁴² See Decorative Waste Containers Scope Ruling.

Attachment 1: Decorative Waste Containers Scope Ruling



A-570-967

C-570-968

Scope Inquiry

PUBLIC DOCUMENT

Operations/Office 3: EBG, JSC

October 31, 2011

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds
Program Manager

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Certain Decorative Waste Containers

Summary

On July 7, 2011, Rubbermaid Commercial Products LLC (Rubbermaid) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain decorative waste containers are encompassed within the scope of the AD and CVD orders on aluminum extrusions from the PRC.¹

Based on our analysis of the comments received, we have determined that the decorative waste containers at issue are outside the scope of the AD and CVD Orders on aluminum extrusions from the PRC.

Background

On July 7, 2011, Rubbermaid, an importer of decorative waste containers, submitted a scope inquiry request.² On July 26, 2011, petitioners submitted comments responding to the scope

¹ See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (the Orders).

² See Rubbermaid's July 7, 2011, submission.



inquiry request filed by Rubbermaid.³ At the request of the Department, on September 12, 2011, Rubbermaid re-filed its initial scope inquiry request with information concerning the manufacturing process of the products at issue as well as the harmonized tariff schedule (HTS) category under which it imported the products at issue. Rubbermaid's September 12, 2011, submission reset the due date of the scope inquiry to October 31, 2011. See 19 CFR 351.225(c)(2).

Scope of the Orders:

The merchandise covered by these orders is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these orders are finished heat sinks. Finished heat sinks are

fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTS): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Legal Framework

The Department examines scope ruling requests in accordance with its scope regulations. See 19 CFR 351.225. On matters concerning the scope of an order, the Department first examines the language of the order(s) at issue and the description of the product contained in the scope request. If the language in the order(s) is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225(k) (1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order(s). See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the factors set forth at 19 CFR 351.225(k) (2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Prior Scope Determinations

Although the Department has issued prior scope determinations concerning the Orders we find that those determinations are not relevant to the instant scope inquiry request on Rubbermaid's decorative waste containers.

Description of the Merchandise

Rubbermaid states that the products at issue are manufactured by first rolling aluminum ingot into sheets. It explains that the sheets are then manufactured into decorative waste containers

utilizing deep drawing and welding production processes. Rubbermaid states that the aluminum products at issue are not produced using an extrusion process. Rubbermaid provides pictures of the products at issue in its scope inquiry request. See Rubbermaid’s July 7, 2011, submission at Exhibits A and B, which contain photos of the following decorative waste container product lines: Model 9070 Atrium Aluminum container, model AOT35 Open Top Container, and Model AOT62 Open Top container. Rubbermaid states that these models are representative examples of all the decorative waste containers manufactured using the production process described above. Rubbermaid states that it imports the products at issue under HTS 7615.19.9000.

Arguments from Interested Parties

Rubbermaid

Rubbermaid states that merchandise subject to the Orders is limited to “aluminum extrusions which are shapes and forms, produced by an extrusion process” Rubbermaid argues that the products at issue are not produced by an extrusion process but are formed via deep drawing and welding processes. Therefore, argues Rubbermaid, the products at issue fall outside the scope of the Orders. Thus, Rubbermaid contends that the Department should find the products at issue are not covered by the scope of the Orders pursuant to 19 CFR 351.225(k)(1).

Petitioners

In their July 26, 2011, submission, petitioners note that the scope includes aluminum extrusions that “are drawn subsequent to extrusion” or that are subsequently “fabricated.” Petitioners argue that the Department must therefore inquire whether the aluminum material in the products at issue was produced using an extrusion process. Petitioners contend that it is not clear whether the sheet metal from which the decorative waste containers were made utilized an extrusion process. If so, argue petitioners, the products at issue are covered by the scope.

Department’s Position: The scope of the Orders states that, “the merchandise covered by this order is aluminum extrusions which are shapes and forms, produced by an extrusion process. . . .” This language makes clear that the scope is limited to aluminum products produced using an extrusion process. Therefore, the scope of the Orders does not cover aluminum products produced using processes other than the extrusion process.

We do not agree with petitioners’ claim that it is uncertain as to whether the products at issue underwent an extrusion process at some point in the production chain. Rubbermaid states that the “aluminum sheet used in the manufacturing process is made from aluminum ingots, which are rolled into sheet.” See Rubbermaid’s September 12, 2011, submission at 1 (emphasis added). Rubbermaid further states that the aluminum sheet is subsequently formed into the decorative waste containers at issue via deep drawing and welding processes. See Rubbermaid’s July 7, 2011, submission at 1. The information from Rubbermaid demonstrates that the initial feedstock used to produce the decorative waste containers were aluminum ingots that were subsequently rolled, drawn, and welded. Thus, based on this information we conclude that the decorative waste containers at issue are not produced using an extrusion process. Therefore, pursuant to 19 CFR 351.225(k)(1), we find the products at issue are not covered by the scope of the AD and CVD orders.

Recommendation

For the reasons discussed above and pursuant to 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the certain decorative waste containers addressed by the instant scope request are outside the scope of the Orders on aluminum extrusions from the PRC because they are not produced using an extrusion process.

If the recommendation in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(d).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date